

Proposed Pre Need Insurance Legislation

Sec 1. 32 MRSA §1401, is amended to read:

§1401. Prearranged funerals or burial plans

1. Plan requirements. Except as provided in subsection 1-A and 1-B, any prearranged funeral or burial plan contracted or undertaken within this State must comply with the following.

Sec 2. 32 MRSA §1401 1-B, is enacted to read:

1-B. Plan funded with proceeds of preneed insurance policy. A prearranged funeral or burial plan agreement may be funded with proceeds of a preneed insurance policy in accordance with this subsection.

A. During a person's lifetime, a person or that person's legal representative may enter into an agreement that services will be performed or personal property will be delivered in connection with the disposition of that person's body after death by the assignment of proceeds of a preneed insurance policy to the funeral establishment upon that person's death.

B. An agreement under paragraph A must be in writing and a copy must be furnished to the person or the person's legal representative by the funeral establishment when the agreement is executed. The agreement must identify the parties to the agreement and must be signed by an authorized representative of the funeral establishment. The agreement may be guaranteed or non-guaranteed. The agreement may be revocable or irrevocable; however, if the agreement is irrevocable, there must be a provision to allow for the transfer of the life insurance proceeds to a successor funeral establishment. The agreement must clearly state terms providing for disposition of excess funds after funeral goods and services have been provided.

C. The receipt of a commission for the sale preneed insurance shall not constitute a violation of 32 MRSA §1455-B (5).

This subsection may not be construed to alter the terms of a preneed insurance policy or supersede any law governing the regulation of life insurance policies.

Sec. 3. 32 MRSA §1401, sub-§2, is amended to read:

2. Rulemaking. The board shall adopt rules regarding prearranged funeral agreements, including, but not limited to:

A. The form, format and content of trust agreements;

B. Standards regarding when service contracts are required in conjunction with trust agreements and the form, format and content of the service contracts;

C. The establishment of reasonable fees that may be charged only pursuant to subsection 1, paragraph D; ~~and~~

D. Inspection of trust agreements, account information and any related documentation; or

E. The form, format, and content of preneed insurance funded prearranged funeral agreements.

Rules adopted pursuant to this section are routine technical rules under the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

Sec. 4. 32 MRSA §1402, is amended to read

§1402. Solicitation of prearranged funerals and funeral business prohibited

No funeral home, funeral establishment or person holding a license under this chapter shall as, or through, an agent or principal solicit a prearranged funeral service or plan for any person or persons. "Prearranged funeral service or plan" shall mean any funeral service or plan which is arranged, planned or determined prior to the demise of a person or persons for whom the funeral service is to be performed. Funeral homes, funeral establishments and licensees under this chapter may enter into contracts or agreements for prearranged funeral services or plans provided that they do not in any manner either as, or through, principals or agents solicit such contract or agreement. Nothing in this section shall prohibit the sale of preneed insurance as defined in 24-A MRSA §711 and as set forth in 32 MRSA §1401, 1-B to a consumer who has contacted a funeral home to prearrange a funeral.

No funeral home, funeral establishment or person licensed under this chapter shall pay or cause to be paid, directly or indirectly, any money or other thing of value to a person not responsible for payment for the funeral as a commission or gratuity for the securing of business for such funeral home, establishment or licensee.

Any person who violates this section is guilty of a Class E crime.

Sec. 5. 24-A MRSA §711, is enacted to read

§711. "Preneed Insurance" defined

"Preneed insurance" means any life insurance policy or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured. Goods and services may include, but are not limited to embalming, cremation, body preparation, viewing or visitation, coffin or urn, memorial stone, and transportation of the deceased. The status of the policy or

contract as preneed insurance is determined at the time of issue in accordance with the policy form filing.

Sec. 6. 24-A MRSA §2176, is amended to read:

§2176. Funeral and burial service contracts prohibited

An insurer may not contract or agree with any funeral director, funeral establishment, mortuary establishment, cemetery, cemetery corporation or association, crematorium, mausoleum or columbarium or any representative of any of these directors or establishments to the effect that the director or establishment shall conduct the funeral, burial, or cremation or other disposal of the remains of any individual insured by the insurer. ~~An insurer may not retain, utilize or employ any director or establishment as a producer or agency of the insurer and a director or establishment may not act as or purport to be an insurance producer or engage in insurance producer activities.~~ Nothing in this section prevents compliance with Title 39-A, section 216, or the use of an insurance policy, including, subject to the provisions of section 2420, the assignment of rights under life insurance contracts, to provide security for the payment for a funeral, burial or cremation ~~or, subject to chapter 27, the naming of a funeral home or funeral director as beneficiary under a life insurance policy to provide payment for a funeral, burial or cremation.~~ Nothing in this section prohibits the use of an insurance policy as an investment by a mortuary trustee pursuant to Title 32, section 1401.

Sec. 7. 24-A MRSA §2176-A, is enacted to read:

§2176-A. Disclosures Required for the Sale of Preneed Insurance

The following information shall be adequately disclosed at the time an application is made, prior to accepting the applicant's initial premium or deposit; for a preneed funeral contract or prearrangement that is funded or to be funded by a preneed insurance policy:

1. The fact that a preneed insurance policy is involved or being used to fund a prearrangement;
2. The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator and any other person;
3. The relationship of the preneed insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;
4. The impact on the prearrangement;

- a. Of any changes in the preneed insurance policy including but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;
 - b. Of any penalties to be incurred by the policyholder as a result of failure to make premium payments;
 - c. Of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the preneed insurance policy;
- 5. A list of the merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;
 - 6. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the preneed insurance policy and the amount actually needed to fund the prearrangement;
 - 7. Any penalties or restrictions, including but no limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee; and
 - 8. If so, the fact that a sales commission or other form of compensation is being paid and the identity of the individuals or entities to whom it is paid.

Summary

This bill makes the following changes:

1. Defines preneed insurance (copied from Code Me. R. 02-031 Ch. 340, Art. IX)
2. Permits the sale of preneed insurance.
3. Requires the State Board of Funeral Services to amend the rules governing prearranged funerals so as to comply with the law.
4. Permits a funeral director to sell preneed insurance with a consumer who has approached a funeral home to preplan a funeral.
5. Adopts disclosures with regard to the sale of preneed insurance that are consistent with NAIC's life insurance disclosure model.
6. Authorizes the payment of commissions in connection with the sale of preneed insurance.